

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CASE NO. 11-78618 - JB
)	
Paul G. Chalmers,)	CHAPTER 13
)	
Debtor.)	

Paul G. Chalmers,)	
)	
Movant,)	CONTESTED MATTER
v.)	
)	
FV-I, Inc. in Trust for Morgan Stanley)	
Mortgage Capital Holdings, LLC,)	
)	
Respondent.)	

**MOTION TO DETERMINE SECURED STATUS OF CLAIM
AND RELEASE UNDERLYING LIENS ON PROPERTY**

COMES NOW Paul G. Chalmers ("Debtor") by and through Counsel and files this "Motion to Determine Secured Status of Claim and Release Underlying Liens on Property" against FV-I, Inc. in Trust for Morgan Stanley Mortgage Capital Holdings, LLC ("FV-I"). In support, Debtor offers the following:

1.

Jurisdiction is proper pursuant to 22 U.S.C. §§ 1334 and 157. Venue is proper pursuant to 28 U.S.C. § 1409. This matter is a core proceeding as defined in 28 U.S.C. §§ 157(b)(2)(A) and (B).

2.

This motion is brought pursuant to 11. U.S.C. § 506(a) and (d) and Fed. R. Bankr. 3012 and 9014.

3.

This Honorable Court has not confirmed the Debtor's Chapter 13 Plan.

4.

Debtor, Paul G. Chalmers, is an individual.

5.

The Respondent, FV-I, is a corporation.

6.

The instant chapter 13 case was initiated by Debtor filing a voluntary petition on October 3, 2011. Debtor's 341 Meeting of Creditors was held on November 15, 2011. Debtor's confirmation hearing is scheduled for December 13, 2011. The deadline for filing non-governmental proofs of claim is February 13, 2012.

8.

Debtor owns real property located 60 Brynlyn Way, Covington, GA 30014 ("Property"). Debtor asserts the fair market value of the Property is \$68,900.00 according to Zillow.com website (Exhibit A).

9.

Debtor's Property is subject to two mortgage liens. The first-priority mortgage is held by Bank of America N.A. in the approximate amount of \$130,325.00, reflected in Bank of America N.A.'s recent monthly mortgage statements to Debtor. Based on the above valuations, the amount of the first-priority mortgage exceeds the value of the Property.

10.

Debtor's Property is also subject to the second-priority mortgage held by FV-I in the

approximate amount of \$31,899.63 (Claim No. 5-1 on Claim Register).

11.

Based upon the Property's value and the amount of the first-priority mortgage, there is no equity in the Property to which FV-I's lien can attach.

12.

FV-I's claim is not secured by any other property of Debtor or Debtor's bankruptcy estate.

13.

Pursuant to 11 U.S.C. §§ 506(d) and 1322(b)(2), FV-I's lien should be declared void.

14.

Pursuant to 11 U.S.C. § 506(a), FV-I's lien should be deemed wholly unsecured.

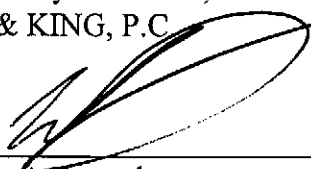
15.

Respondent FV-I, holding a wholly unsecured and void second-priority junior lien, should be ordered to execute a lien release. *See In Re Tanner*, 217 F.3d 1357 (11th Cir. 2000); *see also Bartee v. Tara Colony Homeowners Ass'n (In re Bartee)*, 212 F.3d 277 (5th Cir. Tex. 2000).

WHEREFORE, Debtor respectfully requests:

- a) That this Motion be read and considered;
- b) That an order be entered granting the Motion in Debtor's favor against Respondent;
- c) That Claim No. 5-1 be allowed only as a general unsecured claim;
- d) That, upon discharge, this Court issue an order canceling Respondent's second-priority deed to secure debt currently encumbering Debtor's interest in said property;
- e) That this Court order Respondent to release its lien upon entry of Debtor's discharge in this case;
- f) That each party be responsible for its own fees and costs associated with this action; and
- g) That this Court grant such further relief as it deems just and proper.

Respectfully submitted,
KING & KING, P.C.

/s/ 

William A. Bozarth
Attorney for Debtor/Movant
GA Bar No. 940530
215 Pryor St. SW
Atlanta GA 30303
(404) 524-6400
ecf@kingandkingpc.com

Exhibit A



60 Brynlyn Way

Zestimate®: **\$68,900**

Rent Zestimate: \$943/mo

Mortgage: \$256

Beds:	--
Baths:	2
Sqft:	1,513
Lot:	25,700 sq ft / 0.59 acres
Type:	Single Family
Year built:	2006
Last sold:	September 05 2006 for \$137,000
Parking:	--
Cooling:	Central
Heating:	
Fireplace:	--
County:	Newton
Exterior material:	
Garage sqft:	483
Parcel #:	0073E00000009000
Per floor sqft:	1,513
Roof type:	Asphalt
# Stories:	1
Zillow Home ID:	69889551

This is a 1513 square foot, 2.0 bathroom, single far Covington, Georgia.

Map



Charts and Data

Nearby schools

Primary: Heard-Mixon Elementary School



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	Value	Range
Zestimate	\$68,900	\$49K - \$83K
Rent Zestimate	\$943/mo	\$839 - \$1.2K/mo

Zillow Mobile

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**NOTICE OF MOTION TO DETERMINE SECURED STATUS OF CLAIM
AND RELEASE UNDERLYING LIENS ON PROPERTY**

Paul G. Chalmers, has filed papers with the court to determine that Respondent's claim is wholly unsecured and order Respondent to release its lien upon entry of Debtor's discharge.

If you do not want the court to determine that Respondent's claim is wholly unsecured and order Respondent to release its lien upon entry of Debtor's discharge, or if you want the court to consider your view on the motion, then on or before January 13, 2012, you or your attorney must:

File with the court a written answer explaining your position at:

U.S. Bankruptcy Clerk
Room 1340
75 Spring St., SW
Atlanta, GA 30303

If you mail your response to the court for filing, you must mail it early enough so the court will **receive** it on or before the date stated above. You must attach a certificate stating when, how and on whom (including addresses) you served the response.

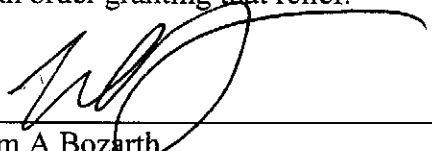
You must also mail a copy to Debtor's attorney:

Marsha King
215 Pryor St., SW
Atlanta, GA 30303

Attend the hearing scheduled to be held on January 31, 2012, at 11:00 a.m. in Courtroom 1402, United States Bankruptcy Court, 75 Spring Street, SW, Atlanta, GA 30303.

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief.

Date: Friday, December 09, 2011

/s/ 

William A Bozarth
Attorney for Debtor/Movant
GA Bar No. 940530
King & King, P.C.
215 Pryor St. SW
Atlanta GA 30303
(404) 524-6400
ecf@kingandkingpc.com

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that I am, and at all times during the service of process was, not less than 18 years of age and not a party to the matter concerning which service of process was made. I further certify that the service of the foregoing Notice and Motion to Determine Secured Status of Claim and Release Underlying Liens on Property was made by:

Regular, first class United States mail, postage fully pre-paid, addressed to:

Paul G. Chalmers
60 Brynlyn Way
Covington, GA 30014

Mary Ida Townson, Chapter 13 Trustee
100 Peachtree Street, Suite 2700
Atlanta, GA 30303

FV-I, Inc.
c/o CT Corporation System (registered agent)
1201 Peachtree Street, NE
Atlanta, GA 30361

Bank Of America, N.A.
c/o CT Corporation System
1201 Peachtree St. NE
Atlanta, GA 30361
Attn: Shakinah Edwards

BANK OF AMERICA, N.A.
Lisa F. Caplan
Rubin Lublin Suarez Serrano, LLC
Suite 400
3740 Davinci Court
Norcross, GA 30092

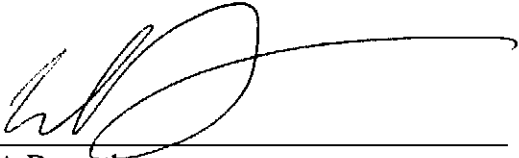
Saxon Mortgage
4708 Mercantile Drive
Forth Worth, TX 76137
attn: Michael B. Shaw

Certified mail, postage fully pre-paid, addressed to:

Morgan Stanley
1585 Broadway
New York, NY 10036
attn: James P. Gorman, CEO

FV-I, Inc.
1585 Broadway
New York, NY 10036
attn: Brian Wornow, CEO

This Friday, December 09, 2011.

By  /s/
William A Bozarth
Attorney for Debtor/Movant
GA Bar No. 940530
King & King, P.C.
215 Pryor St. SW
Atlanta GA 30303
(404) 524-6400
ecf@kingandkingpc.com